THE ADMINISTRATION OF JUSTICE IN THE MODERN CITY.

I.

FOR most practical purposes, American legal and judicial history begins after the Revolution. The administration of justice in colonial America was at first executive and legislative.[1] A remnant of the former still exists in the judicial functions of mayors in some jurisdictions. The latter persisted a long time. Legislative divorces were granted in New York after the Revolution[2] and were known in Connecticut,[3] Maryland,[4] and Rhode Island[5] in the nineteenth century. Pennsylvania did not do away with them till 1874,[6] and the legislature of Alabama attempted to grant a divorce as late as 1888.[7] During the Revolution and even later it was the practice in some states to obtain a new trial by legislative act after final judgment.[8] The legislature of Rhode Island exercised jurisdiction in insolvency until 1832, and appellate jurisdiction till 1857.[9] The senate and the superior judges

[1] "In all the Colonies the General Assembly or Legislature at first constituted the sole court of law; later the Governor and his Deputies or Assistants; and in many Colonies it was not until half a century after settlement that separate and independent courts were instituted." Warren, History of the American Bar, 1. "All causes of marriage, divorce and alimony, and all appeals from the judges of probate shall be heard and determined by the Governor and Council until the legislature shall by law make other provision." Mass. Const., 1780, Pt. II, ch. 3, art. 5.

[2] 2 Kent, Commentaries, 97.

[3] Starr *v.* Pease, 8 Conn. 541 (1831).

[4] Crane *v.* Meginnis, 1 Gill & J. 474 (1829).

[5] The legislature of Rhode Island entertained applications for divorce till 1852. Eaton, Development of the Judicial System in Rhode Island, 14 Yale L. J. 148, 153.

[6] Cronise *v.* Cronise, 54 Pa. St. 255 (1867). In 1873, the last year in which this jurisdiction was exercised, eighteen private divorce acts were passed. Loyd, Early Courts of Pennsylvania, 102.

[7] Jones *v.* Jones, 95 Ala. 443 (1891).

[8] Plumer, Life of Wm. Plumer, 170; Warren, History of the American Bar, 136. In Merrill *v.* Sherburne, 1 N. H. 199, 216 (1818), four cases of legislative granting of new trials between 1791 and 1817 are referred to.

[9] Eaton, Development of the Judicial System in Rhode Island, 14 Yale L. J. 148, 150–153.

constituted the court of errors and appeals in New York until 1846.[10] Moreover, with a few conspicuous exceptions, the courts, prior to and for some time after the Revolution, were made up largely of untrained magistrates who administered justice according to their common sense and the light of nature, with some guidance from legislation.[11] Of the three justices of the Superior Court of New Hampshire after independence, one was a clergyman and another a physician.[12] A judge of the highest court of Rhode Island from 1814 to 1818 was a blacksmith, and the Chief Justice of that state from 1819 to 1826 was a farmer.[13] When James Kent went upon the bench in New York in 1798 he could say with entire truth

"There were no reports or state precedents. The opinions from the bench were delivered *ore tenus*. We had no law of our own and nobody knew what [the law] was." [14]

Our judicial organization, then, and the great body of our American common law are the work of the last quarter of the eighteenth century and the first half of the nineteenth century. On the other hand our great cities and the social and legal problems to which they give rise are of the last half of the nineteenth century, and indeed the pressing problems do not become acute until the last quarter of that century. Our largest city now contains in three hundred and twenty-six square miles a larger and infinitely more varied population than the whole thirteen states when the federal judicial organization, which has so generally served as a model, was adopted. But New York City did not attain a population of one million until about 1880; and questions of sanitation and housing were first urged after the Civil War. Such commonwealths as the states west of the Missouri, each of which, with a population not much exceeding a million, occupies an area

[10] N. Y. Const., 1777, Art. 32; N. Y. Const., 1821, Art. 5, § 1.

[11] "In all the Colonies the courts were composed of laymen, with the possible exception of the Chief Justice. It was not until the era of the War of the Revolution that it was deemed necessary or even advisable to have judges learned in the law." Warren, History of the American Bar, 1.

[12] Corning, The Highest Courts of Law in New Hampshire, 2 Green Bag, 469, 470.

[13] Edwards, The Supreme Court of Rhode Island, 2 Green Bag, 525, 532–533.

[14] Memoirs of Chancellor Kent, 289. "In none of the Colonies were there any published reports of decided cases prior to the Revolution." Warren, History of the American Bar, 2.

about two-thirds as great as the German empire, represent more nearly the conditions for which the American judicial organization was developed and for which the common law of England was made over into a law for America.

Hence, to understand the administration of justice in American cities at the end of the nineteenth century we must first perceive the problems of administration of justice in a homogeneous pioneer or rural community of the first half of the nineteenth century and the difficulties with which lawyers and jurists had to contend in meeting those problems. Next we must perceive the problems of administration of justice in a modern urban community, and the difficulties involved in meeting these problems with the legal and judicial machinery that has come down to us. These things comprehended, it may be possible to suggest the lines along which improvement should be sought and the means of improvement which are available.

Accordingly we may turn first to the problems of administration of justice in the homogeneous pioneer or rural community of the first half of the nineteenth century. These problems were three: (1) to work out a system of principles and rules, adapted to America, on the basis of the common law of England, (2) to decentralize the administration of justice so as to bring justice to every man's door, and (3) by making over the English criminal law and criminal procedure to devise means to restrain the occasional criminal and the criminal of passion in a homogeneous community, of a vigorous pioneer race, restrained already for the most part by deep religious conviction and strict moral training.

Chief of these problems was the one first named, the problem of working out a system of principles and rules adapted to America. In a rude pioneer community the main point is to keep the peace. Tribunals with power to enforce their judgments are the most pressing need.[15] This stage had been gone through with prior to the Revolution. In the next stage, as wealth increases, commerce develops, and society becomes more complex, the social interests in the security of acquisitions and in the security of transactions call imperatively for certainty and uniformity in the administra-

[15] Compare the customary law of the mining country after 1849. Jennison *v.* Kirk, 98 U. S. 453, 457–458 (1878); Hughes, The Evolution of Mining Law, 24 Report of the American Bar Association, 220.

tion of justice and hence demand rules. But, as we have seen, at the beginning of the nineteenth century American law was undeveloped and uncertain. Administration of justice by lay judges, by executive officers, and by legislatures was crude, unequal, and often partisan, if not corrupt.[16] The prime requirement was rule and system, whereby to guarantee uniformity, equality, and certainty.

Another reason for the insistence upon the exact working out of rules and the devotion to that end of the whole machinery of justice, which is so characteristic of nineteenth-century America, is to be found in jealousy of governmental action. A pioneer or a sparsely settled rural community is content with and prefers the necessary minimum of government. The social interests in general security, in security of acquisitions and in security of transactions, require a certain amount of governmental machinery. They require civil and criminal tribunals, and rules and standards of decision to be applied therein. But when every farm was for the most part sufficient unto itself, the chief concern was that the governmental agencies set up to secure these social interests might interfere unduly with individual interests. This pioneer jealousy of governmental action was reinforced in America from another quarter. Puritan influence had much to do with shaping originally the materials upon which we worked in making American law and American legal and political institutions. It had more to do with the way in which we worked them into an American common law.[17] The age of Coke, the classical period of our Anglo-American common law, was the age of the Puritan in England. Indeed the parliament of the Commonwealth printed Coke's Second Institute, which is almost a text-book of our American bills of rights. And the period that ends with the Civil War, the formative period of American law, was the age of the Puritan in America.

The Puritan conceived of law as a guide to the individual conscience. The fundamental proposition from which he proceeded

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[16] Plumer, Life of Wm. Plumer, 170; John Adams, 2 Works, 283; Fisher, New Jersey as a Royal Province, ch. 8; Loyd, Early Courts of Pennsylvania, ch. 2, 3; Parker, C. J., in Pierce *v.* State, 13 N. H. 536, 557 (1843); Warren, History of the American Bar, ch. 1–6.

[17] See my paper, Puritanism and the Common Law, 45 Am. Law Rev. 811.

was that man was a free moral agent with power to choose what he would do and a responsibility coincident with that power. Hence he put individual conscience and individual judgment in the first place. He believed that no authority should coerce them, but that everyone must assume and abide the consequences of the choice he was free to make. His principle of consociation rather than subordination [18] demanded that a fixed, absolute, universal rule, which the individual had contracted to abide, be resorted to; not the will or discretion of the magistrate. It demanded that the state and the law interfere after action, but not before; it demanded judicial imposition of penalties upon one who had wilfully chosen the wrong course, not administrative compulsion to take the right course. Hence our polity developed an inconsistency that is part of the Puritan character. He rebelled against control of his will by state or magistrate, yet he loved to lay down rules, since he believed in the intrinsic sinfulness of human nature. In the same way we have devoted our whole energies to legislation and judicial law-making. At the same time, the enforcing agencies have not merely been neglected, they have been deliberately hampered, lest they interfere unduly with the individual free will.

Thus the chief problem of the formative period of American law was to discover and lay down rules; to develop a system of certain and detailed rules which, on the one hand, would meet the requirements of American life, and, on the other hand, would tie down the magistrate by leaving as little to his personal judgment and discretion as possible, would leave as much as possible to the initiative of the individual, and would keep down all governmental and official action to the minimum required for the harmonious coexistence of the individual and the whole. This problem determined the whole course of our legal development until the last quarter of the nineteenth century. Moreover it determined our system of courts and judicial organization. Above all else we sought to insure an efficient machine for the development of law by judicial decision. For a time this was the chief function of our highest courts. For a time it was meet that John Doe suffer for the commonwealth's sake. Often it was less important to decide the particular cause justly than to work out a sound and

[18] "We are not over one another," said Robinson, "but with one another." See Lord Acton, Lectures on Modern History, 200. *Cf.* Mass., Bill of Rights, Art. 10.

just rule for the future. Hence for a century the chief energies of our courts were turned toward the development of our case law, and the judicial hierarchy was set up with this purpose in view.

A second problem of the formative period of American law was to decentralize the administration of justice so as to bring justice to every man in a sparsely settled community. The system of English courts at the time of the Revolution was too arbitrary and involved to serve as a model to be followed in detail in this country. But, overlooking concurrent jurisdictions, concurrent powers of review, and such anomalies as the writ of error to the Common Pleas from the King's Bench, a general outline could be perceived, which was the model of our several systems. To begin at the bottom, this was: (1) local peace magistrates and local inferior courts for petty causes, (2) a central court of general jurisdiction at law and over crimes, with provision for local trial of causes at circuit and review of civil trials in bank in the central court, (3) a central court of equity in which causes were heard in one place, though testimony was taken in the locality, and (4) a supreme court of review. In the United States, all but five or six jurisdictions merged the second and third. But with that salutary act of unification most of our jurisdictions stopped. Indeed for a season there was no need of unification. The defects in the foregoing scheme that appealed to the formative period of American judicial organization lay in the second and third of the tribunals above described, namely, the central court of law and the central court of equity. In a country of long distances in a period of slow communication and expensive travel, these central courts entailed intolerable expense upon litigants.[19] It was a prime necessity to bring justice to every man's back door. The French judicial organization, local courts of first instance, district courts of appeal, and a central court of review, attracted attention, not only because of the great interest of the period in all things French, but because it suggested a means of localizing the administration of justice. The influence of the French system upon the federal judicial organization and upon the reorganization in New York in 1846

[19] This is well brought out in the several constitutional conventions in New York. Proceedings and Debates of the Convention for Amending the Constitution of New York, 1821, 500–524; Debates and Proceedings of the Convention for the Revision of the Constitution of the State of New York, 1846, 559, 571, 574, 593, 595, 690, 695.

is obvious. But the model was English, at a time when English judicial organization was at its worst. Multiplicity of courts is characteristic of archaic law. Whenever any new type of cause arises, the primitive device is to set up a new court. The English judicial organization grew up in this way, so that when Coke wrote his Fourth Institute, he could describe seventy-four courts, seventeen of which did the work now done in England by three. We took an archaic system for a model, and the circumstances of the time in which our judicial system was wrought tended to foster a policy of multiplication. Accordingly in a time in which unification is sorely needed, the tendency to make new courts is still strong with us.

A hundred years ago, the problem seemed to be how to hold down the administration of punitive justice and protect the individual from oppression under the guise thereof, rather than how to make the criminal law an effective agency for securing social interests. English criminal law had been developed by judicial experience to meet violent crimes in a period of force and violence. Later, the necessities of more civilized times had led to the development in the court of Star Chamber of what is now the common law as to misdemeanors. Thus one part of the English law of crimes, as our fathers found it, was harsh and brutal, as befitted a law made to put down murder by violence, robbery, rape, and cattle-stealing in a rough and ready community.[20] Another part seemed to involve dangerous magisterial discretion, as might have been expected of a body of law made in the council of Tudor and Stuart kings in an age of extreme theories of royal prerogative.[21] The colonists had had experience of the close connection of criminal law with politics. Hence not only were they concerned to do away with the brutalities of the old law as to felonies, but even more their constant fear of political oppression through the criminal law led them and the generations following, which had imbibed

[20] "For example what a lamentable case it is to see so many Christian men and women strangled on that cursed tree of the gallows, insomuch as if in a large field a man might see together all the Christians that but in one year throughout England come to that untimely and ignominious death, if there were any spark of grace or charity in him, it would make his heart to bleed for pity and compassion." Coke, Epilogue to the Third Institute (published 1644).

[21] See the examples of unequal and arbitrary punishments given in 1 Stephen, History of the Criminal Law, 338–345.

their ideas, to exaggerate the complicated, expensive, and time-consuming machinery of a common-law prosecution, lest some safeguard of individual liberty be overlooked,[22] to give excessive power to juries, and to limit or even cut off the power of the trial judge to control the trial and hold the jury to its province.[23] Nor did these enfeeblings of punitive justice work much evil in a time when crime was rare and abnormal, when the community did not require the swift moving punitive justice, adjusted to the task of enforcing a voluminous criminal code against a multitude of offenders, which we demand to-day.

To sum up, our American common-law polity presupposes a homogeneous population, which is jealous of its rights, zealous to enforce law and order, and in sympathy with the law and with the institutions of government. It presupposes a public which may be relied upon to set the machinery of the law in motion when wrong is done,[24] a people intrinsically law-abiding, which for the most

[22] *Cf.* the remarks of Taney, C. J., in United States *v.* Reid, 12 How. (U. S.) 361, 364 (1851). See my paper, The Ritual of Punitive Justice, Proceedings of the Conference on Criminal Law and Criminology at Madison, Wis., Nov. 26–27, 1909, p. 36.

[23] Another influence coöperated here. "There are features of American democracy," says Professor Sumner, "which are inexplicable unless one understands this frontier society. Some of our greatest political abuses have come from transferring to our now large and crowded cities maxims and usages which were convenient and harmless in backwoods country towns." Life of Andrew Jackson, 7. This is quite as true of some of our abuses in legal procedure. See the observations of Mr. Justice Brown, 12 Report of the American Bar Association, 273; also my paper, Some Principles of Procedural Reform, 4 Ill. L. Rev. 388, 397. Many crudities in American judicial organization and procedure are legacies of the Jefferson Brick era of American politics. See Loyd, Early Courts of Pennsylvania, 149.

[24] Jhering has pointed this out in a characteristic passage: "What energy it [the feeling of legal right] still possesses . . . we . . . have frequently proof enough of, in the typical figure of the traveling Englishman who resists being duped by innkeepers and hackmen with a manfulness which would induce one to think he was defending the law of old England — who, in case of need, postpones his departure, remains days in the place and spends ten times the amount he refuses to pay. The people laugh at him and do not understand him. It were better if they did understand him. For in the few shillings which the man here defends, old England lives. At home, in his own country, everyone understands him, and no one ventures lightly to overreach him. Place an Austrian of the same social position and the same means in the place of the Englishman — how would he act? If I can trust my own experience in this matter, not one in ten would follow the example of the Englishman. Others shun the disagreeableness of the controversy, the making of a sensation, the possibility of a sensation to which they might expose themselves, a misunderstanding which the Englishman in England need not at all fear, and which he quietly takes into the bargain: that is, they pay. But in the few pieces of silver which the English-

part will conform to rules of law when they are ascertained and made known, so that the chief concern of courts and of the state is to settle what the law is, and a people which may be relied upon to enforce the law intelligently and steadfastly upon juries. In other words, our common-law polity postulates an American farming community of the first half of the nineteenth century; a situation as far apart as the poles from what our legal system has had to meet in the endeavor to administer justice to great urban communities at the end of the nineteenth and in the twentieth century.[25]

II.

What, then, are the problems of the administration of justice in an American city to-day? I think we may recognize eight: (1) to work out a system of legal administration of justice which will secure the social interest in the moral and social life of every individual under the circumstances of the modern city, upon the basis of rules and principles devised primarily to protect the interest in general security, in the security of acquisitions and the security of transactions, at a time when these were best protected by securing individual interests of substance; (2) to organize the administration of justice so that there may be an efficient machine to dispose of the great volume of litigation in the modern city, to enforce the great mass of police regulation required by the conditions of urban life, and make the criminal law effective to secure social interests; (3) to make adequate provision for petty litigation in communities where there is a huge volume of such litigation which must be dealt with adequately on pain of grievous denial of justice; (4) to apply and enforce law in a community where furnishing a guide to the individual conscience is not enough, where it is often of more importance to enforce rules vigorously but

man refuses and which the Austrian pays, there lies concealed more than one would think of England and Austria; there lie concealed centuries of their political development and of their social life." Jhering, The Struggle for Law (Lalor's transl.), 62–63. It must be obvious that a system of reliance upon individual initiative which grew up for the one type is quite inapplicable in a society of the other type.

[25] An experienced prosecutor in one of the largest cities in the country has stated that, in his experience, the average city juror "is a sort of don't-give-a-rap sort of fellow — he says 'let the fellow go.' He has no respect for the law." Proceedings of the First National Conference on Criminal Law and Criminology, 1909, 122.

intelligently than to insure that the rules made are the best possible, where, in other words, law requires sanction and must do much of the work of morals; (5) to apply and enforce law in a heterogeneous community, divided into classes with divergent interests, which understand each other none too well, containing elements hostile to government and order, containing elements ignorant of our institutions, on the one hand unable to understand our tenderness of individual liberty and on the other hand suspicious of authority and of magistrates; (6) to administer punitive justice in a community where the defective, the degenerate of decadent stocks, and the ignorant or enfeebled victim of severe economic pressure are exposed to temptations and afforded opportunities beyond anything our fathers could have conceived, where the professional criminal and the promoter and the victim of commercialized vice must be reckoned with, — and this upon the basis of legal principles worked out for the occasional criminal, the criminal of passion, and the rough virile vice of a vigorous stock that lived out of doors; (7) to administer justice in relations of family life, where conditions of crowded urban life and economic pressure threaten the security of the social institutions of marriage and the family; and (8) to unshackle administration from the bonds imposed when men who had little experience of popular government and much experience of royal government, in their desire to have a government of laws and not of men, sought to make law do the work of administration.

Let us look briefly at some of these problems.

Demand for socialization of law, in America, has come almost wholly if not entirely from the city. We have no class of agricultural laborers demanding protection. The call to protect men from themselves, to regulate housing, to enforce sanitation, to inspect the supply of milk, to prevent imposition upon ignorant and credulous immigrants, to regulate conditions and hours of labor and provide a minimum wage, and the conditions that require us to heed this call, have come from the cities. But our legal system has had to meet this demand upon the basis of rules and principles developed for rural communities or small towns, — for men who needed no protection other than against aggression and overreaching between equals dealing in matters which each

understood. Less than a generation ago we were echoing the outcry of our fathers against governmental paternalism.[26] To-day, not only have we swung over to this condition in large measure, as our increasing apparatus of commissions and boards and inspectors testifies every day, but we are beginning to call for what has been styled governmental maternalism [27] to meet the conditions of our great urban communities. Although much has been done and comparatively rapid progress is now making, it is perhaps still a chief problem how to achieve these results through orderly development of a traditional legal system which has evolved for centuries along purely individualist lines.

Again, the demand for organization of justice and improvement of legal procedure comes from our cities. It is a significant circumstance that in the debates upon this subject in the past six years in our bar associations, national and state, the city lawyer has asserted that reform was imperative, while the country lawyer has contended that the evils were greatly exaggerated and that grave changes were wholly unnecessary; the city lawyer has been urging ambitious programs of reform and the country lawyer has been defeating them. A modern judicial organization and a modern procedure would, indeed, be a real service to country as well as to city. But the pressure comes from the city, to which we are vainly endeavoring to adjust the old machinery.

Courts in our great cities as they are now organized are subjected to almost overwhelming pressure by an accumulated mass of litigation. Usually they sit almost the year round, and yet they tire out parties and witnesses with long delays, and in some jurisdictions dispose of much of their business so hastily or imperfectly that reversals and retrials are continually required. Such a condition may be found in the courts of general jurisdiction in practically all of our cities. To deal adequately with the civil litigation of a city, to enforce the mass of police regulations required by conditions of urban life, and to make the criminal law effective to secure social interests, we must obviate waste of judicial power, save time, and conserve effort. There was no need of this when

[26] Lowe *v.* Rees Printing Co., 41 Neb. 127, 135 (1900); State *v.* Kreutzberg, 114 Wis. 530, 537 (1902); People *v.* Coler, 166 N. Y. 1, 14 (1901).

[27] See Jethro Brown, Underlying Principles of Modern Legislation, 171–177.

our judicial system was framed. There is often little need of it in the country to-day. In the city, the waste of time and energy in doing things that are wholly unnecessary results in denial of justice.[28]

Two signal cases of waste of judicial power, the multiplicity of independent tribunals and the vicious practice of rapid rotation, which prevails in the great majority of jurisdictions, whereby no one judge acquires a thorough experience of any one class of business, may only be noticed. As an example of the possibilities of the first, it has been observed that in Chicago to-day, at one and the same time, the Juvenile Court, passing on the delinquent children; a court of equity, entertaining a suit for divorce, alimony and the custody of children; a court of law, entertaining an action for necessaries furnished an abandoned wife by a grocer; and the criminal court or domestic relations court, in a prosecution for desertion of wife and child, — may all be dealing piecemeal at the same time with different phases of the same difficulties of the same family.[29]

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[28] "Our methods have not been devised for the purpose of saving time and conserving effort. We waste time and effort in doing wholly unnecessary things. . . . No one is sure of what the result of a law suit is going to be, nor is anyone certain that the result may not be overturned on appeal for some reason which does not touch the real merits of the controversy. The time which we spend in court unnecessarily at the motion hour and on the trial call, if it could be turned into money, would represent an aggregate in dollars and cents sufficient to endow and maintain a pension system for superannuated lawyers. Our clients are going to trust companies, accident insurance companies and title guarantee companies simply because these corporations can give them what they want at less cost or with less risk than we can and they are resorting to trade arbitrations or are charging off their contested claims to profit and loss because of the loss, delay, uncertainty and expense of enforcing their rights in the courts." Report of the President (Edgar B. Tolman, Esq.), Chicago Bar Association Annual Reports, 1912, 12.

[29] While the institution of the Municipal Court of Chicago, in 1906, marked a distinct advance in judicial organization in America in that the court was given an administrative head with power to control its administrative agencies, utilize its personnel for the speedy disposition of business as the exigencies of business might require, and adjust its organization from time to time to the demands of its work; was given full power to make rules of procedure; and was not hampered by detailed legislative provisions as to practice; it is unfortunate that the occasion was not seized to unify and reorganize the entire judicial system. Municipal courts in imitation of the one in Chicago are becoming common. But, excellent as they are in comparison with the old magistrates' courts which they supersede, it is a misfortune to add another court to a system which already involves too many. There are some sensible remarks upon this subject in the Report of the Special Committee on the Judicial System of Philadelphia County, presented to the Law Association of Philadelphia,

The second, its causes and its results, are treated thoroughly by Mr. Kales in a recent paper.[30] Suffice it to say that one phase of the evil has reached such proportions in New York City as to be the subject of a report by a committee of the Bar Association. In that report we may read how different proceedings in a single cause have been heard before twenty-two different justices.[31] Till such things are cured in the only way in which they can be cured permanently, namely, by a modern organization of the judicial department, under a head with power and responsibility, little can be done to make the law in action an efficient agency of justice.

Moreover, the great cost of administration of justice in the modern city by methods devised for wholly different conditions is a serious consideration. The enormous sums of money which we spend each year in the judicial administration of justice must eventually invite critical scrutiny of the mode in which these sums are employed. Social legislation is requiring, and will continue to require, increased expenditures and exacting taxation. Every source of expense that competes with the demands of this legislation upon which men's hearts are set will soon be compelled to justify itself by economy and efficiency. In this respect Chicago has furnished a model in its Municipal Court. What that court has done, in its limited field, shows how much might be done by a thoroughly organized judicial department for the whole commonwealth.[32]

December 3, 1912, p. 11. See my paper, The Causes of Popular Dissatisfaction with the Administration of Justice, 29 Report of the American Bar Association, 578, 589–595.

[30] Reorganization of the Circuit and Superior Courts of Cook County, 7 Ill. L. Rev. 218.

[31] Proposal for Calendar System for New York County Based on the Principle of One Judge to One Case (Report of Sub-Committee of the Committee on Law Reform of the Association of the Bar of the City of New York), 1912. A change has recently been made in the Children's Courts of New York City whereby a single judge will sit continuously and become responsible for the whole work in those courts. The prior practice had been to have a large number of judges of the Court of Special Sessions sit in rotation in the Children's Courts for one month at a time. In Philadelphia the practice of rotation of judges who serve for short periods only in the Juvenile Court is regarded as a grave defect in judicial administration.

[32] The annual reports of the Municipal Court of Chicago, of which five have been published, deserve thorough study by all who are interested in the problem of judicial

A third problem is to make adequate provision for petty litigation, to provide for disposing quickly, inexpensively, and justly of the litigation of the poor, for the collection of debts in a shifting population, and for the great volume of small controversies which a busy, crowded population, diversified in race and language, necessarily engenders. It is here that the administration of justice touches immediately the greatest number of people. It is here that the great mass of an urban population, whose experience of the law in the past has been too often experience only of the arbitrary discretion of police officers, might be made to feel that the law is a living force for securing their individual as well as their collective interests. For there is a strong social interest in the moral and social life of the individual. If the will of the individual is subjected arbitrarily to the will of others because the means of protection are too cumbrous and expensive to be available for one of his means against an aggressive opponent who has the means or the inclination to resist, there is an injury to society at large. The most real grievance of the mass of the people against American law is not with respect to the rules of substantive law, but rather with respect to the enforcing machinery, which too often makes the best of rules nugatory in action.

In Chicago this situation has been met and well met by the Municipal Court. After six years, that court is still unique in this country as an example of a thoroughly organized modern court with power to make the law an effective instrument of justice.[33] But the country at large still halts; for none of the mu-

organization. In 1911, the last year for which we have a report, 53,223 civil cases were brought in that court, of which 50,931 had been disposed of at the end of the year. During the year, the court rendered money judgments in civil cases amounting to $4,096,254.28, an amount equal to the sum of the judgments rendered during the same period by the High Court of Justice in England. But during the same period the court had before it and disposed of 9,526 prosecutions for felonies, 11,770 prosecutions for misdemeanors, and 71,434 prosecutions or penal actions for violation of city ordinances, a total of 92,730. In other words, this court of twenty-eight judges, thanks to a modern organization and simple procedure, disposed in 1911 of 145,953 causes. Fifth Annual Report of the Municipal Court of Chicago, 10, 77, 87, 91. This is the only court, as yet, in this country which is so organized as to be able to furnish adequate statistics of judicial administration.

[33] For example, in 1911, pursuant to a plan formulated by a committee of the judges a branch was organized, known as the Domestic Relations Court. "It required no new laws to provide for the establishment of this branch, the existing laws . . . being sufficient. Section four of the Municipal Court Act provides that 'as many

nicipal courts that have sprung up in the wake of the Municipal Court of Chicago has been given a like organization or conceded like powers of doing justice. Hence it seems expedient to search for the causes of our general neglect of the petty litigation, as we disparagingly term it, of the mass of our city population. For, taking the country as a whole, it is so obvious that we have almost ceased to remark it, that in petty causes, that is with respect to the everyday rights and wrongs of the great majority of an urban community, the machinery whereby rights are secured practically defeats rights by making it impracticable to assert them when they are infringed. Indeed in a measure this is so in all causes. But what is merely exasperating in large causes is downright prohibitive in small causes. While in theory we have a perfect equality, in result, unless one can afford expensive and time-consuming litigation, he must constantly forego undoubted rights, to which in form the rules of law give full security, but for which, except where large sums are involved, the actual conduct of litigation affords no practicable remedy.

Many causes have contributed to this neglect of provision for petty litigation, which disgraces American justice. One has been noticed in another connection. We have had to devise a body of substantive law for large causes and small alike in an age of rapid growth and rapid change. We have studied the making of law

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branch courts shall be held in each district as may be determined by the Chief Justice to be necessary for the prompt and proper disposition of the business of the court. . . . Such branch court may be given such designation by number or otherwise, as may be determined by the Chief Justice.' . . . Section 8 of the Municipal Court Act provides further that 'the Chief Justice shall also superintend the preparation of the calendars of cases for trial in said court and shall make such classification and distribution of the same upon different calendars as he shall deem proper and expedient.'" Fifth Report of the Municipal Court of Chicago, 68. Under these provisions, the court has been able so to arrange and classify its business, improving the scheme from time to time, as dictated by experience, as to make the Domestic Relations Court, in one year, an effective agency of social improvement. The statistics on pages 68–73 of the report cited deserve study both by lawyers and by sociologists. It should be noted that in this court the jurisdiction can be broadened or narrowed and the number of judges increased or decreased simply by rule of court, as experience in the conduct of its business shows to be expedient. In these respects there is manifest advantage over the Domestic Relations Court in New York City in which these things are prescribed in detail by statute. Laws of New York, 1910, ch. 659, § 74. See a good account of the Chicago Court by Chief Justice Olson in The Survey, Aug. 19, 1911, p. 739.

sedulously. For more than a century in America we have been engaged in developing by judicial experience a body of principles and a body of rules as logical deductions therefrom to accord as nearly as may be with the requirements of justice. This is true especially of that most important part of our law which is to be found in the reports of adjudicated cases. Almost the whole energy of our judicial system has been employed in working out a consistent, logical, minutely precise body of precedents. The important part of our system has not been the trial judge who dispenses justice to litigants, but the justice of the appellate court who uses the litigation as a means of developing the law; and we judge the system by the output of written opinions, and not by the actual results *inter partes* in actual causes. We seem to have assumed that when well made, law will enforce itself. On the whole, notwithstanding some notable mistakes here and there, our courts have done their work of law-*making* well. But while our eyes have been fixed upon the rules, which are but the means of achieving justice, the application of the rules, the results which we obtain every day in concrete causes, have escaped our attention.[34] If the dilatory and expensive machinery of enforcement succeeds finally in applying the principle to the cause, we may be assured that in the very great majority of causes the abstract result will be what it should be. But our failure to devote equal attention to application and enforcement of law has too often allowed the machinery designed to give effect to legal rules to defeat the end of law in its actual operation. The whole life of the law is

[34] This seems to be an inevitable incident of development of a legal system by juristic science and judicial experience. "There is a real and constant opposition between the interests of the suitor and the tendency of scientific law. . . . Legal conceptions, however you may define and explain, will not have the same content in all minds, and the facts to which they are applied will wear a different aspect according to the presumptions which the judge brings to bear on them. The more thoroughly a matter is investigated, the more fully it is compared with other cases, the more the application of different legal principles or categories to it is discussed, the greater chance there would appear to be of the right decision being arrived at in the particular case and of the general law being set in clearer light. But the process is long and costly, and, cases being thus selected only by accident, the general improvement of the law is very slight and very slow. The suitor's real interest is forgotten." Roby, Introduction to Justinian's Digest, xviii–xix. "Suitors take no interest in law as a science. They merely desire to have a decision in the case in which they are interested. They are not concerned with what has happened or may happen in any other matter." Sir John Hollams, Jottings of an Old Solicitor, 161.

in its enforcement, and this, not the abstract content of the legal system, must receive our best attention in the immediate future.

Perhaps a second reason is that our law has had a too exclusively professional development in the immediate past. One of the inherent dangers of all system and all science is that system and science, which are but means, will be taken for ends and that system will be perfected purely for its own sake. Something of this sort happened in American law in the nineteenth century. Not long ago an excellent judge in one of the great cities of the country objected to the Juvenile Court on the ground that it was not a court at all; a court was, he said, a place where justice was judicially administered, and as he had learned these terms from his books, what was meted out in a Juvenile Court was not justice, since it varied with the case and the person, and was not administered judicially, since it was administered not according to rule but according to almost uncontrolled discretion. Another judge, to whom I showed recently the last report of the Municipal Court of Chicago, when he saw that the court had a general superintendent, that it kept statistics and devoted much attention to proper gathering of them, study of them, and embodying the lessons they had to teach in rules, that it maintained a bureau of information, instead of compelling the citizen to guess and then deciding after argument whether he had guessed right, — when, I say, he saw these startling things in the report, — threw it down exclaiming, "but that isn't a court, that's a cross between an imperial ministry of justice and a legal aid society." And in a sense it is. But that is what a municipal court must be in a large city. In such a court direct access to the court, through proper officers, should be possible and easy.

For ordinary causes our contentious system has great merit as a means of getting at the truth. But it is a denial of justice in small causes to drive litigants to employ lawyers, and it is a shame to drive them to legal aid societies to get as a charity what the state should give as a right. An example of what we might do is at hand. In this country we have few judges and many lawyers. Germany has many judges and few lawyers. The reason is that the Germans cast upon the court much for which we rely upon the lawyers. Thus they put upon the judge the duty of ascertaining and formu-

lating the claims of the parties.[35] Such a system is inapplicable to our superior courts or to considerable causes in a municipal court. But we have developed something of the sort in probate courts in many parts of the country, and a judicious adaptation and further development seems to be necessary to justice in petty causes.

In the higher courts, lawyers of experience on each side will be watchful to see that the claims of the parties are well presented, that the court is fully informed, and that justice is done so far as skilful advocacy may secure it. In petty causes there ought to be no expensive advocacy. One side or the other, unless the game of litigation is played for pure pleasure, cannot afford it. The court, therefore, has no assistance, or no adequate assistance. Hence the judge cannot be a mere umpire. He must actively seek the truth and the law, largely if not wholly unaided. The lay vision of every man his own lawyer has been shown by all experience to be an illusion. The other extreme, a professional lawyer for every man, has no place in petty litigation. The alternative is a judge who represents both parties and the law, and a procedure which will permit him to do so effectively. No doubt he should have assistance in the way of clerks, who may save valuable judicial time by showing parties how to present their respective claims. At any rate our first concern in a people's court is a procedure that will help parties assert and secure their rights, and to get away from the involved and over-mechanical procedure which has become in so many jurisdictions a means afforded each party of hindering the other in his search for justice. The law needs perennially an infusion of ideas from outside of professional thought. Happily the Municipal Court Act for Chicago was so drawn as to permit such things, and Judge Olson knew how to look beyond the lines of everyday professional thinking, and had the courage to undertake the simple but revolutionary improvements that make his court not merely a machine for deciding cases but a bureau of justice.[36]

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[35] See Karl von Lewinski, Courts and Procedure in Germany, 5 Ill. L. Rev. 193.

[36] The court has unlimited jurisdiction of actions upon contract, and of actions for conversion of or injury to personal property, and by construction of the statute, unlimited jurisdiction in actions against carriers of passengers for personal injuries, besides general jurisdiction of all causes where the amount claimed by the plaintiff

A third reason is that our procedure has largely been determined by the conditions of rural communities of seventy-five or one hundred years ago. Hence when better provision for petty litigation is urged, many repeat the stock saying that litigation ought to be discouraged. It will not do to say to the population of modern cities that the practical cutting off of all petty litigation, by which theoretically the rights of the average man are to be maintained, is a good thing because litigation ought to be discouraged. Litigation for the sake of litigation ought to be discouraged. But this is the only form of petty litigation which survives the discouragements involved in American judicial organization and procedure. In truth the idea that litigation is to be discouraged, proper enough, in so far as it refers to amicable adjustment of what ought to be so adjusted, has its roots chiefly in the obvious futility of litigation under the conditions of procedure which have obtained in the immediate past. The idea is much more appropriate to agricultural communities, where in intervals of work the farmer, remote from the distractions of city life, found his theatre in the court house and looked to politics and litigation for amusement, than to modern urban communities.[37] Moreover there is danger that in discouraging litigation we encourage wrong-doing, and it requires very little experience

does not exceed $1000, and a general magistrates' jurisdiction. See Second Annual Report of the Municipal Court of Chicago, 11–13. The police officers of the city are *ex officio* deputy bailiffs of the court. It maintains a bureau of information, to which the citizen may apply to learn what the court can do for him and how to apply for its assistance. But the judges also do much of this work. In 1911, the judge assigned to the Court of Domestic Relations had 1673 different "interviews" of this sort. The report says: "An effort is made in every case to properly direct persons who have complaints over which this court has no jurisdiction. Many people come for advice only. In many cases husbands and wives have come in together to have differences settled, in which case the Judge or the State's Attorney instructs them as to their obligations and rights." The court has also a woman "social secretary" to whom women may apply in matters of delicacy. Fifth Report, 71–72.

[37] See Torrey, A Lawyer's Recollections, ch. 3. What has been called "the sporting theory of justice," the idea that judicial administration of justice is a game to be played to the bitter end as a football game might be, has its roots, no doubt, in Anglo-American character and is closely connected with the individualism of the common law. But it was fostered by the rural attitude toward litigation. Torrey says: "In fact many of these legal trials at the time were looked upon as huge jokes." Again: "These proceedings would be called rather sharp practice in these days, but they were very common at that time and, as I have already said, the whole contest was looked upon as a contest of wits." A Lawyer's Recollections, 120, 122.

in the legal aid societies in any of our cities to teach us that we have been doing that very thing. Of all peoples in the world we ought to have been the most solicitous for the petty litigation of the poor. Unhappily, except as the organization of municipal courts in recent years has been bringing about a change, we have been callous to the just claims of this type of controversies.

A fourth reason is that upon obvious grounds the legal profession has very little interest in petty causes. May it not be that we have been assuming too lightly that what is unprofitable for the lawyer is unprofitable for the law?

A fifth reason is fear of the wide discretion and free scope for judicial action which are necessary to the administration of justice in small causes. This must be spoken of again presently in another connection. Enough has been said to show that serious obstacles have stood and still stand in the way of adequate provision for this class of controversies. How to make the law effective for its purpose in action is a difficult problem throughout the domain of law. It is doubly difficult in petty causes, because such causes, from their very nature, require the simplest and cheapest enforcing machinery consistent with law and justice, and nothing seems to have been so hard to attain in legal procedure as simplicity and cheapness.

Application and enforcement of law are now regarded as the central questions in modern legal science. These questions are especially acute in America because our polity commits matters to the courts which elsewhere are left to the executive and the legislative departments, and in American cities because in these cities the demands made of the courts increase continually. In these communities the conception of law as a guide to the individual conscience is wholly inadequate. What the past left to the home and to the church, we are compelled more and more to commit to the law and to the courts. The circumstances of city life and the modern feeling that law is a product of conscious and determinate human will put a larger burden upon the law, and hence upon the agencies that administer the law, than either has been prepared to bear. This is the more apparent in application and enforcement of law in a heterogeneous community. Our common law assumed that there were no classes and that normally men

dealt with one another on equal terms and at arm's-length.[38] It assumed also that every normal part of the community was zealous to uphold the law and content to abide it. Not a little friction has resulted from application of rules based upon this theoretical equality in communities divided into classes with divergent interests. A great deal of ineffectiveness has come from application of common-law principles to elements of the city population which do not understand our individualism and our tenderness of individual liberty, and from reliance upon individual initiative in case of other elements which by instinct and training are suspicious of authority and of magistrates. Mr. Train's recent book shows vividly how fear of courts, bred of conditions in another land, leads immigrants to tolerate gross oppression rather than to go to the law for relief.[39]

Administration of justice in relations of family life is difficult, for two reasons. One is that the questions involved are largely questions of human conduct, of the border line between law and morals, a field where law, from its very nature, is least efficacious. The other is that in dealing with such relations judicially a very considerable discretion is needed and yet they involve matters more tender than any that can come before tribunals. The powers of the court of Star Chamber were a bagatelle compared with those of American Juvenile Courts and Courts of Domestic Relations. If those courts chose to act arbitrarily and oppressively they could cause a revolution quite as easily as did the former. The powers which we are compelled to entrust to them call for the strongest judges we can put upon the bench.[40]

Finally, there is the problem of freeing administration from the rigid limitations imposed in the eighteenth century, and by imitation in all our constitutions down to the end of the nineteenth century, through fear of executive tyranny. In the eighteenth

[38] This was brought out repeatedly in the older decisions on liberty of contract. Godcharles *v.* Wigeman, 113 Pa. St. 431 (1886); Frorer *v.* People, 141 Ill. 171, 186 (1892); State *v.* Loomis, 115 Mo. 307 (1870); People *v.* Beck, 10 N. Y. Misc. 77 (1880) (opinion of White, J.).

[39] Courts, Criminals, and the Camorra, chap. ix., especially pp. 219, 222–225, 229–230, 234–235.

[40] See the remarks of Frick, J., in Mill *v.* Brown, 31 Utah 473, 486–488 (1907). Also the testimony of Judge Pinckney, quoted in Breckinridge and Abbott, The Delinquent Child and the Home, 202 *et seq.*

century, separation of powers and a system of checks and balances were regarded as essential to liberty; as absolute and fundamental principles of law and of politics. Accordingly the framers of our constitutions, state and federal, sought to make them the basis of our government. But the attempt to make an exact analytical scheme of the powers of government according to the threefold division has broken down. For sovereignty is a unit. The so-called three powers are not three distinct things: they are three general types of manifestation of one power. In the development of sovereignty, these three types have been differentiated gradually as a result of experience that certain things, which demand special competency or special training or special attention, are done better by those who devote thereto their whole time or their whole attention for the time being. The principle involved, therefore, is no more than the principle involved in all specialization. If the officers of a court may best gather and study statistics of judicial administration to the end that such administration be improved, if to that end they may best conduct laboratories for criminological research, there is nothing in the nature of a court to prevent. Whether such things shall be done by a ministry of justice or by attachés of a tribunal is a question of mere expediency. But above this, to secure social interests in the modern city we must greatly enlarge the scope of administration. For reasons already suggested, the Anglo-American started out to leave to the courts what in other lands was committed to administration and inspection and executive supervision. He was averse to inspection and supervision in advance of action, preferring to show the individual his duty by a general law, to leave him free to act according to his judgment, and to prosecute him and impose the predetermined penalty in case his free action infringed the law. This attempt to confine administrative action to the inevitable minimum, which originally was fundamental in our polity, resulted in the nineteenth century in a multitude of rules which hindered as against few which helped. Regulation of public utilities, factory inspection, food inspection, tenement-house inspection, and building laws are compelling us to turn more and more from the criminal law to administrative prevention.[41] Yet such prevention still

[41] See Professor Commons' account of the Wisconsin Industrial Commission (the only complete account yet published) in The Survey, January 4, 1913, p. 440. It

usually requires judicial action to make it effective. On the other hand, in the reaction from the extravagant judicial control of the last century there is danger that we withdraw these matters wholly from the domain of law. To work out an adequate system of administrative law is not the least of the tasks of the immediate future.

III.

So much for the problems. Some of the difficulties they involve have been mentioned incidentally. But a few demand further notice.

One difficulty which is gradually remedying is the *Weltanschauung*, if one may so express it, of the traditional element of our legal system. A developed legal system is made up of two elements — a traditional element and an enacted or imperative element. Of these the former is by far the more important. We must rely upon it to meet all new questions in the first instance, for the legislator is rarely able to anticipate them. Moreover the legislator is seldom able to do more than lay out a broad outline. Hence the traditional element plays a chief part even in the field of enacted law. It is drawn upon to supply the gaps in legislation, to develop the principles introduced by legislation, to interpret legislation. In the large field unappropriated by enactment it is supreme. It is obvious, then, that above all else the condition of the law depends upon the condition of this element of the legal system. Undoubtedly a change is taking place. Gradually the traditional element of our law is absorbing and being made over by the economics and social science of to-day. But the process is necessarily slow, and for a time it was obstinately resisted. Not a little of the present dissatisfaction with our courts is based upon decisions of the end of the last century, when the finality of

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is suggestive that this commission is made an "appellate administrative court." See also First Comparative Report of the Administration of Labor Laws, International Association for Labor Legislation, 1911; McNeill, The Massachusetts Board of Boiler Rules, Davies, Safety Inspection in Illinois, 1 American Labor Legislation Review, No. 4; Kingsbury, Labor Laws and their Enforcement; Austin, Administration of Labor Laws, Legislative Review No. 3, American Association for Labor Legislation; Downey, Regulation of Urban Utilities in Iowa, Iowa Applied History Series, III, No. 3, 81–86.

the common law was a received dogma. Fortunately few courts, if any, would render these decisions to-day.[42]

A second and no less serious difficulty is to be found in our bills of rights. It is not to be forgotten that these provisions were often designed to prevent the state from interfering with the maximum of individual self-assertion. Both by bills of rights and by separation of powers and checks and balances, the eighteenth century and the pioneer or rural communities of the nineteenth century, from which our constitutions so largely proceed, sought to hold down all the activities of government. On the contrary the conditions of modern city life call upon us to set them free and to make government an instrument of securing social interests which are endangered by individual freedom of action. The administration of justice feels the strain of this situation acutely.

A difficulty no less serious, but often overlooked, is that justice in the city has often been reviewed and thus dictated from without. In the states which include large cities the greater share of the litigation that comes before the highest court is city litigation. Yet in these same courts country judges often largely preponderate. Nor is this all. Almost universally these courts sit, not in the chief city of the state, but in a relatively small town, where the atmosphere is anything but metropolitan. Mr. Bryce has remarked the influence of a capital upon legislation:

"It is true, that under a representative government power rests with those whom the people have sent up from all parts of the country. Still these members of the legislature reside in the capital and cannot but feel the steady pressure of its prevailing sentiment, which touches them socially at every point." [43]

This is no less true of a court. If its members reside at the capital, they are likely to absorb the ideas of the capital; if, as in Illinois (where the Supreme Court has attained a bad eminence in its treatment of social legislation), they reside in their several districts, and but one is habitually in touch with the city, it may be predicted that but one will be filled with the ideas of the city, and that the others will reflect rather the ideas of the country or of the small town. Almost all of the backwardness of American

[42] See my paper, Social Problems and the Courts, 18 Am. Journal of Sociology, 331.

[43] 2 American Commonwealth, 2 ed., 855–856.

courts with respect to social problems and social legislation has been backwardness with respect to social problems of our cities and social legislation for our cities. Is it not obvious what a difference it would have made if the everyday social relations of the judges of our highest courts had been in New York instead of Albany, Chicago instead of Springfield, St. Louis instead of Jefferson City, and so on? Is it likely that a court sitting in New York City would have gone wrong in construing tenement-house legislation? [44] Questions may well seem abstract and academic in Albany or Springfield that are concrete and practical in New York or Chicago. Judges there may well fail to appreciate the practical aspects of legislation which a court sitting in the metropolis, whose judges met and talked with social workers in the ordinary intercourse of society, would perceive. Our rural capitals are not a little to be blamed if the course of justice in our highest courts with respect to urban problems has been guided largely by judges who looked at them through rural spectacles.

Thus the Supreme Court of Illinois, in dealing with the abbreviated records of the Municipal Court of Chicago, seemed to have in mind the record made by a clerk from a judge's minutes in a court which numbers its cases by tens and hundreds — a system quite impossible in a court that disposes of cases by the ten thousands.[45] Here again it is significant that the one judge who lived in or about Chicago dissented. He might have said to the majority that in the most technical period of the common law, when records had to be engrossed laboriously upon valuable parchment, abbreviations of words and contractions were a matter of course. So much are these things determined by circumstances of time and place.

We have harped too much on supposed class feeling of judges, on sinister influences behind the choice of judges and bad men in judicial office, and on the mechanics of getting judges off of the bench. All these things are trifles in comparison with our received juristic tradition as it has been taught and handed down, and our judicial organization whereby the administration of law for urban communities is reviewed and thus dictated by men who

[44] Grimmer *v.* Tenement House Department, 204 N. Y. 370, 205 N. Y. 549 (1912). See Dr. Devine's comments in The Survey, March 9, 1912.

[45] Stein *v.* Meyers, 253 Ill. 199 (1912).

have no experience or knowledge of the social problems of those communities.

Another difficulty is that we assume a petty judge is good enough for petty causes. In these cases we must have free scope for the good sense of the judge, tempered by knowledge of the law, trained reason and experience of many causes, or we must deny justice. The usual American plan of trial in the first instance by a lay magistrate, followed, since he is not trusted, by a retrial to a jury in a higher court on appeal, and then followed by review in an appellate court, is indefensible. There should be but one trial, and but one review of that trial.[46] But if this is to be the practice, the judges of first instance must be equal to the responsibility involved. In this respect the English provision for county judges should be our model. The highest court does not require better judges than the lowest, when the lowest is given effective powers of doing justice.[47]

In conclusion, to make the administration of justice in the modern city what it should be, we must have, first, more thorough knowledge of the social conditions in our cities, for which law must be devised and to which it must be applied. We must have sociological teaching and study of the law and of the theories upon which law shall proceed. Second, we must have a much larger degree of municipal autonomy and at least a fair proportion of city judges upon our highest courts. Third, we must organize the judicial department as a unit; give it an administrative head with power to prevent waste of public time and public money and to direct the whole energies of the judicial organization to its work for the time being, and with responsibilities corresponding to this power; give it strong judges to whom large powers may be safely entrusted; give it full control of its clerical and executive force, and power to utilize this force as experience dictates to further the purposes of judicial administration.[48] Finally, we must not be

[46] Appeals from the Municipal Court of Chicago go direct to the Appellate Court. There has been a movement to provide an appellate branch or division in the court itself.

[47] On the subject of organization and personnel of courts in its relation to petty causes, see Report of the Special Committee to Suggest Remedies and Formulate Proposed Laws to Prevent Delay and Unnecessary Cost in Litigation, 34 Report of the American Bar Association, 578, 589–595.

[48] See the report last referred to, p. 591.

in too great a hurry. These are not things which can be brought about by legislative fiat day after to-morrow. The social interest in scientific administration of justice is much greater than the public commonly conceives. We must not overturn what has been built up by judicial experience. We must rather learn how to use it. The social science of to-day is largely unlearning that of yesterday. We must not bring our law so thoroughly up to date to-day that it will be out of date to-morrow.

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